

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2541
Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke Probation
11 Against:

Case No. 2005-35

12 DERRICK LLOYD DAVIS
6001 Auburn Street, #263
13 Bakersfield, CA 93306
14 Registered Nurse License No. RN 443452

**PETITION TO REVOKE
PROBATION**

Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Petition to Revoke
19 Probation solely in her official capacity as the Executive Officer of the Board of Registered
20 Nursing, Department of Consumer Affairs (Board).

21 2. On or about August 31, 1989, the Board of Registered Nursing issued
22 Registered Nurse License Number 443452 to Derrick Lloyd Davis (Respondent). Effective July
23 18, 2005, the Board of Registered Nursing in a disciplinary action entitled "In the Matter of
24 Accusation Against Derrick Lloyd Davis," Case No. 2005-35, issued a decision, effective
25 November 15, 2005, in which Respondent's Registered Nurse License was revoked. However,
26 the revocation was stayed and Respondent's license was placed on probation for a period of five
27 (5) years with certain terms and conditions. A copy of that decision is attached
28 as Exhibit A and incorporated by reference. The Registered Nurse License will expire on

November 30, 2008, unless renewed.

TERMS OF PROBATION

3. Among the terms and conditions imposed by the Board in Case No. 2005-35, are:

Condition No. 2.

4. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Condition No. 5.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

Condition No. 7.

6. **Employment Approval and Reporting Requirements.** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

///

///

///

1 Condition No. 14.

2 7. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
3 shall completely abstain from the possession, injection or consumption by any
4 route of all controlled substances and all psychotropic (mood altering) drugs,
5 **including alcohol**, except when the same are ordered by a health care professional
6 legally authorized to do so as part of documented medical treatment. Respondent
7 shall have sent to the Board, in writing and within fourteen (14) days, by the
8 prescribing health professional, a report identifying the medication, dosage, the
9 date the medication was prescribed, the Respondent's prognosis, the date the
10 medication will no longer be required, and the effect on the recovery plan, if
11 appropriate.

12 Respondent shall identify for the Board a single physician, nurse practitioner or
13 physician assistant who shall be aware of Respondent's history of substance abuse
14 and will coordinate and monitor any prescriptions for Respondent for dangerous
15 drugs, controlled substances or mood-altering drugs. The coordinating physician,
16 nurse practitioner, or physician assistant shall report to the Board on a quarterly
17 basis Respondent's compliance with this condition. If any substances considered
18 addictive have been prescribed, the report shall identify a program for the time
19 limited use of any such substances.

20 The Board may require the single coordinating physician, nurse practitioner, or
21 physician assistant to be a specialist in addictive medicine, or to consult with a
22 specialist in addictive medicine.

23 Condition No. 15.

24 8. **Submit to Tests and Samples.** Respondent, at his expense, shall
25 participate in a random, biological fluid testing or a drug screening program which
26 the Board approves. The length of time and frequency will be subject to approval
27 by the Board. Respondent is responsible for keeping the Board informed of
28 Respondent's current telephone number at all times. Respondent shall also ensure
that messages may be left at the telephone number when he is not available and
ensure that reports are submitted directly by the testing agency to the Board, as
directed. Any confirmed positive finding shall be reported immediately to the
Board by the program and Respondent shall be considered in violation of
probation.

In addition, Respondent, at any time during the period of probation, shall fully
cooperate with the Board or any of its representatives, and shall, when requested,
submit to such tests and samples as the Board or its representatives may require
for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized
and not reported to the coordinating physician, nurse practitioner, or physician
assistant, and the Board files a petition to revoke probation or an accusation, the
Board may suspend Respondent from practice pending the final decision on the
petition to revoke probation or the accusation. This period of suspension will not
apply to the reduction of this probationary time period.

If Respondent fails to participate in a random, biological fluid testing or drug
screening program within the specified time frame, Respondent shall immediately
cease practice and shall not resume practice until notified by the Board. After

1 taking into account documented evidence of mitigation, if the Board files a
2 petition to revoke probation or an accusation, the Board may suspend Respondent
3 from practice pending the final decision on the petition to revoke probation or the
accusation. This period of suspension will not apply to the reduction of this
probationary time period.

4 JURISDICTION

5 9. This Petition to Revoke Probation is brought before the Board of
6 Registered Nursing (Board), Department of Consumer Affairs, under the authority of the
7 following laws. All section references are to the Business and Professions Code unless otherwise
8 indicated.

9 10. Section 2750 of the Business and Professions Code ("Code") provides, in
10 pertinent part, that the Board may discipline any licensee, including a licensee holding a
11 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
12 2750) of the Nursing Practice Act.

13 FIRST CAUSE TO REVOKE PROBATION

14 (Failure to Submit Quarterly Reports)

15 11. Respondent's probation is subject to revocation because he failed to
16 comply with probation condition no. 5, by failing to submit quarterly reports on April 7, 2007,
17 July 7, 2007, October 7, 2007 and January 7, 2008.

18 SECOND CAUSE TO REVOKE PROBATION

19 (Failure to Comply with Employment Reporting Requirements)

20 12. Respondent's probation is subject to revocation because he failed to
21 comply with probation condition no. 7, by failing to notify the Board that he was terminated from
22 Around the Clock Home Care on June 18, 2007.

23 THIRD CAUSE TO REVOKE PROBATION

24 (Failure to Abstain from Alcohol)

25 13. Respondent's probation is subject to revocation because he failed to
26 comply with probation condition no. 14, by testing positive for alcohol on May 7, 2007, May 17,
27 2007, May 23, 2007, August 3, 2007, and August 20, 2007.

28 ///

1 FOURTH CAUSE TO REVOKE PROBATION

2 (Failure to Submit to Tests and Samples)

3 14. Respondent's probation is subject to revocation because he failed to
4 comply with probation condition no. 15, by failing to be available to test or respond to requests
5 for random drug screening on February 6, 2006, February 22, 2006, March 16, 2006, April 6,
6 2006, April 24, 2006, May 8, 2006, June 6, 2006, June 15, 2006, July 27, 2006, October 18,
7 2006, October 31, 2006, November 15, 2006, December 12, 2006, December 20, 2006, January
8 19, 2007, February 28, 2007, March 7, 2007, March 16, 2007, April 4, 2007, April 24, 2007,
9 May 29, 2007, June 25, 2007, September 5, 2007, September 7, 2007, September 28, 2007,
10 October 4, 2007, October 18, 2007, October 22, 2007, November 2, 2007, November 12, 2007,
11 November 20, 2007, November 29, 2007, December 14, 2007, December 27, 2007, January 2,
12 2008, January 4, 2008, January 31, 2008, and February 5, 2008.

13 FIFTH CAUSE TO REVOKE PROBATION

14 (Non-Compliance with Probation Program)

15 15. Respondent's probation is subject to revocation because he failed to
16 comply with probation condition no. 2, in that he failed to fully comply with the terms and
17 conditions of his probation, as more fully described in paragraph nos. 12-16 above.

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking the probation that was granted by the Board of Registered
22 Nursing in Case No. 2005-35 and imposing the disciplinary order that was stayed thereby
23 revoking Registered Nurse License No. 443452, issued to Derrick Lloyd Davis;

24 2. Revoking or suspending Registered Nurse License No. 443452, issued to
25 Derrick Lloyd Davis;

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/14/08

Ruth Ann Terry for
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

davis accusation.wpd
LA2007602195

Exhibit A

Decision and Order and Stipulated Settlement and Disciplinary Order

Board of Registered Nursing Case No. 2005-35

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Derrick Lloyd Davis
6001 Auburn Street #263
Bakersfield, CA 93306

Case No. 2005-35

OAH No. L2004110185

Registered Nurse License No. 443452

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on July 18, 2005.

IT IS SO ORDERED June 17, 2005.

Sandra K. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

**BEFORE THE
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**DERRICK LLOYD DAVIS
6001 Auburn Street, #263
Bakersfield, CA 93306**

Registered Nurse License 443452

Respondent.

Case No. 2005-35

OAH No. L2004110185

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Bakersfield, California, on February 22, 2005.

Kimberlee D. King, Deputy Attorney General, represented Ruth Ann Terry, M.P.H., R.N. (complainant).

Respondent represented himself.

Complainant seeks to discipline respondent's license on the basis of conduct associated with substance abuse. Respondent stipulated or did not dispute the truth of the allegations and presented evidence in mitigation and rehabilitation.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision. On February 24, 2005, complainant moved to reopen the record to submit evidence in support of her request for cost reimbursement. In a declaration submitted with the request, complainant's counsel stated that respondent was not opposed to reopening the record and that the parties had agreed that he would have fifteen days to submit evidence of objections to the cost certificate. Three certificates of costs, collectively premarked as Exhibit 9, were received with the motion. On March 1, 2005, complainant submitted original certificates of cost. Respondent did not submit any objections or other documentation by the agreed-upon deadline of March 11, 2005, and Exhibit 9 has been received in evidence. The matter was submitted for decision on March 11, 2005.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs, State of California.
2. On March 31, 1990, the Board issued Registered Nurse License number 443452 to respondent. The license, which has not been previously disciplined, expires on November 30, 2006.
3. Respondent completed 21 years of military service in 2000, retiring as a decorated Master Sergeant. He spent the last ten years as an active member of the Air Force reserves, part of the Desert Storm deployment. He worked as a medic in the military service and obtained his nursing degree, on February 9, 1987, from the School of Health Care Sciences at Sheppard Air Force Base, in Wichita Falls, Texas.
4. After his retirement from the Air Force, respondent started working as a registered nurse at Kern Medical Center (KMC) in Bakersfield, California. In December 2000, respondent turned to controlled substances obtained at KMC, primarily opiates, to cope with the stress of returning to civilian life and of raising three sons alone. His sons were 14, 17, and 20 at the time.
5. The parties stipulated that respondent obtained the following controlled substances from KMC supplies without physician authorization for his own use, falsifying medical records in the process:
 - a. On December 12, 2000, respondent obtained 500 mg of ketamine, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (g), and a dangerous drug pursuant to Business and Professions Code¹ section 4022;
 - b. On January 8, 2001, respondent obtained 10 mg of morphine sulfate, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to section 4022;
 - c. On January 9, 2001, at 2:59 a.m., respondent obtained 75 mg of Demerol, a brand name of meperidine hydrochloride, a derivative of pethidine, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(17), and a dangerous drug pursuant to section 4022;

¹ Unless otherwise stated, all further statutory references are to the Business and Professions Code.

- d. On January 9, 2001, at 7:47 p.m., respondent obtained a syringe with 75 mg of Demerol;
- e. On January 9, 2001, at 8:59 p.m., respondent obtained a syringe with 75 mg of Demerol;
- f. On January 9, 2001, at 11:46 p.m., respondent obtained a syringe with 50 mg of Demerol;
- g. On January 10, 2001, at 4:16 a.m., respondent obtained a syringe with 50 mg of Demerol;
- h. On January 10, 2001, at 4:27 a.m., respondent obtained a syringe with 2 mg of morphine sulfate;
- i. On January 13, 2001, at 4:10 a.m., respondent obtained a syringe with 50 mg of Demerol;
- j. On January 27, 2001, at 12:54 a.m., respondent obtained a syringe with 75 mg of Demerol;
- k. On January 27, 2001, at 12:58 a.m., respondent obtained a syringe with 75 mg of Demerol;
- l. On January 27, 2001, at 2:44 a.m., respondent obtained a syringe with 10 mg of morphine sulfate;
- m. On January 27, 2001, at 3:19 a.m., respondent obtained a syringe with 10 mg of morphine sulfate;
- n. On January 27, 2001, at 6:48 a.m., respondent obtained a syringe with 4 mg of morphine sulfate; and
- o. On January 28, 2001, at 11:37 p.m., respondent obtained a syringe with 4 mg of morphine sulfate.

6. On July 16, 2001, respondent started working at Comprehensive Blood & Cancer Center (CBCC), a medical oncology clinic.² He worked in the pain center of CBCC and had access to controlled substances.

² No evidence was presented to establish whether respondent continued to work at KMC after January 2001.

7. On May 29, 2001, CBCC received a syringe containing 30 mg of morphine sulfate intended for patient R.M.,³ which medication had to be used within 30 days. The patient did not present to the clinic during the 30-day period and CBCC notified the pharmacy so that the drug could be retrieved. Respondent took the morphine syringe without authorization while it was in storage at CBCC.

8. On July 27, 2001, respondent ingested the morphine sulfate and suffered significant adverse effects. No medical evidence was introduced to establish respondent suffered an overdose of morphine sulfate, but an experienced Bakersfield Police Department officer, Jay Wells, testified that respondent appeared to be under the influence of the substance. Upon first arriving at respondent's apartment, Officer Wells observed respondent hanging over his balcony and yelling that he could not breathe. Once inside the apartment, Officer Wells noticed that respondent was pale and sweating; appeared confused; and gasped for air and stated he could not breathe. Paramedics attended to respondent and transported him to a medical facility.

9. Respondent was arrested in October 2001 for the events of July 27, 2001. He participated in court-approved diversion, which started his rehabilitation process.

10. On November 27, 2001, respondent entered the Jason's Retreat substance abuse treatment program in Bakersfield, California. He fulfilled his criminal court requirement in five months by successfully completing the outpatient treatment program on April 21, 2002. As part of the program, he attended two group meetings each week. Respondent thereafter also completed a 30-day residential program (May 22, 2002) and a 6-month sober living program (September 24, 2002), both at Jason's Retreat. He regularly attended Alcoholics Anonymous and Narcotics Anonymous meetings, completing 360 meetings in the first 360 days.

11. Respondent has a new outlook on life and has been clean and sober since July 27, 2001. He continues to regularly attend Alcoholics Anonymous meetings and has a support network that includes family and friends. His sponsor, Trent Jones, wrote that he regularly meets with respondent and that he is confident in respondent's continued recovery. A friend of sixteen years and former coworker, Lynn Knapp, wrote that respondent provided safe, effective, and empathetic care to his patients.

12. Respondent has remained active at Jason's Retreat, helping others on their road to recovery. He volunteers his time to teach a weekly health and hygiene class. Outpatient Services Director Fred Posey praised respondent's dedication to recovery and to helping others.

³ Initials have been used to protect the patient's privacy.

13. On April 2004, respondent started working for Home Care, an agency providing home care and home safety evaluations to its clients. Respondent disclosed his past abuse to his employer before starting employment. He has successfully discharged the duties of his employment and letters were received at the hearing from his supervisor and from patients praising his ability and dedication. Teresa Lyle, R.N., wrote that respondent treats his patients in a safe and competent manner and that she has not noticed any evidence of drug or alcohol use.

14. The Board has incurred costs in connection with the investigation and prosecution of this matter: charges from the Attorney General's office in the amount of \$6,379.75 (\$5,629 in Deputy Attorney General costs and \$750.75 in Legal Assistant costs); and charges from the Division of Investigation in the amount of \$4,140. The total is, therefore, \$10,519.

15. Except for those previously addressed in this Decision, all other allegations in the accusation are found to be unproved or surplusage.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 2761, subdivisions (a) and (d), and 2762, subdivision (a) in that he engaged in unprofessional conduct by unlawfully obtaining, possessing, and administering to himself, morphine, a controlled substance, by reason of factual finding numbers 7 and 8.

2. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (e) in that he engaged in unprofessional conduct by falsifying medical records in diverting patient medications for his own use, by reason of factual finding number 5.

3. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 2761, subdivisions (a) and (d), and 2762, subdivision (b) in that he engaged in unprofessional conduct by ingesting controlled substances to an extent or in a manner dangerous or injurious to himself and to members of the public, by reason of factual finding numbers 7, and 8.⁴

4. All evidence submitted in mitigation and rehabilitation has been considered. In brief, the unprofessional conduct occurred over three and one half years ago and has not been repeated. Respondent has learned from the experience and changed his life. He has completed a rehabilitation program and has continued his efforts to remain clean and sober. His sobriety date is July 27, 2001. In light of this evidence, outright revocation of the license is unwarranted. The

⁴ No evidence was presented regarding respondent's actual use of the substances set forth in factual finding number 5 and, accordingly, violation of Business and Professions Code sections 2761, subdivisions (a) and (d), and 2762, subdivision (b) was not established with respect to these substances.

past substance abuse, however, warrants temporary monitoring for the protection of the public. Physical or mental examination, or specific rehabilitation programs, are not warranted as specific conditions of probation in light of the period of sobriety and respondent's commitment to his present recovery program.

5. Cause exists pursuant to section 125.3 to order respondent to pay the Board's costs of investigation and adjudication in this matter, by reason of factual finding number 14 and legal conclusion numbers 1 through 3.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the board must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the board must consider a respondent's ability to pay; and the board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

In this case, after giving due consideration to respondent's ability to pay, as evidenced by his employment situation, it is reasonable to reduce the costs by one third, to \$7,013 and to allow respondent to make monthly payments of \$116.88 during the period of probation.

ORDER

Registered Nurse License 443452 issued to respondent Derrick Lloyd Davis is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

1. OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. COMPLY WITH PROBATION PROGRAM - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

3. REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

5. SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of probation for up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisor prior to commencement of any new nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care – Respondent is approved to work in the home health care setting, provided the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

9. EMPLOYMENT LIMITATIONS – Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

11. **COST RECOVERY** - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$7,013 at the rate of \$116.88 per month during the period of probation.

12. **VIOLATION OF PROBATION** – If respondent violates the conditions of probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. **LICENSE SURRENDER** - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

14. **ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** -Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

15. SUBMIT TO TESTS AND SAMPLES - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.


If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

COMPLETION OF PROBATION - Upon successful completion of probation, respondent's license will be fully restored.

SEVERABILITY CLAUSE - Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

DATED: 4/7/05


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 KIMBERLEE D. KING, State Bar No. 141813
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2581
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2005-35

12 DERRICK LLOYD DAVIS
6001 Auburn Street, #263
13 Bakersfield, CA 93306

**FIRST AMENDED
ACCUSATION**

14 Registered Nurse License No. 443452

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this First Amended
20 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
21 Nursing, California Department of Consumer Affairs.

22 2. On or about August 31, 1989, the Board of Registered Nursing issued
23 Registered Nurse License No. 443452 to Derrick Lloyd Davis (Respondent). The license was in
24 full force and effect at all relevant times and will expire on November 30, 2004, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing
27 (Board), California Department of Consumer Affairs, an agency established under Division 2 of
28 the Business and Professions Code, pursuant to the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 2750 provides that the Board may discipline any licensee for any
4 reason provided in the Nursing Practice Act.¹

5 5. Section 492 provides that notwithstanding any other provision of law,
6 successful completion of any diversion program under the Penal Code shall not prohibit any
7 agency established under Division 2 of the code, from taking disciplinary action against a
8 licensee for professional misconduct, notwithstanding that evidence of that misconduct may be
9 recorded in a record pertaining to an arrest.

10 6. Section 2761 provides that the Board may take disciplinary action against
11 a nurse for any of the following:

12 (a) Unprofessional conduct

13

14 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
15 abetting the violating of, or conspiring to violate any provision or terms of this chapter or
16 regulations adopted pursuant to it.

17 7. Section 2762 provides that it is unprofessional conduct for a person
18 licensed under this chapter to do any of the following:

19 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
20 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or
21 furnish or administer to another, any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code or any dangerous drug
or **dangerous device** as defined in Section 4022.

22 “(b) Use any controlled substance as defined in Division 10 (commencing with
23 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
24 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
25 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

26

27
28 1. Sections 2700, et. seq.

1 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
2 entries in any hospital, patient, or other record pertaining to the substances described in
subdivision (a) of this section.” (emphasis added)

3 8. California Health and Safety Code, section 11364, states:

4 “It is unlawful to possess an opium pipe or any device, contrivance, instrument, or
5 paraphernalia used for unlawfully injecting or smoking a controlled substance . . . specified in
subdivision (b) or (c) of section 11055. . . .”

6 9. Section 125.3 provides that the Board may request the administrative law
7 judge to direct a licensee found to have committed a violation or violations of the licensing act
8 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 10. CONTROLLED SUBSTANCES

10 a. “Demerol” is a brand of meperidine hydrochloride, a derivative of
11 pethidine, and is a Schedule II controlled substance pursuant to Health and Safety Code
12 section 11055(c)(17) and a dangerous drug pursuant to section 4022.

13 b. “Ketalar” is a brand of ketamine, a Schedule III controlled
14 substance pursuant to Health and Safety Code section 11056(g) and a dangerous drug
15 pursuant to Section 4022.

16 c. Morphine (morphine sulfate) is a Schedule II controlled substance
17 pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug
18 pursuant to Section 4022.

19 FIRST CAUSE FOR DISCIPLINE

20 (Obtain or Possess Controlled Substance and Drug Paraphernalia)

21 11. Respondent’s license is subject to discipline pursuant to Sections 492,
22 2761(a) and (d), and 2762(a) for unlawfully obtaining, possessing, prescribing, or administering
23 to himself, morphine, a controlled substance, and a medical syringe, which was prescribed to a
24 patient at his place of employment as follows:

25 a. On or about October 17, 2001, Respondent was arrested for
26 violating Health and Safety Code section 11364 (possession of a drug paraphernalia).

27 b. The circumstances surrounding the arrest are that on or about July
28 27, 2001, medical personnel and Bakersfield police officers were called to Respondent’s

1 residence. He was leaning out of his second story window which he had broken and was
2 screaming for help, claiming he was suffocating and couldn't breathe. Respondent was in
3 possession of a large medical syringe containing approximately 10 milliliters of Morphine
4 and appeared to be under the influence of a drug.

5 c. Respondent had stolen the morphine on or about July 26, 2001, while on
6 duty as a registered nurse at the Comprehensive Blood and Cancer Center in Bakersfield,
7 California. Respondent removed 600mg of Morphine Sulfate from a cabinet in the Pain
8 Medicine Department that was prescribed for Patient #14402.

9 SECOND CAUSE FOR DISCIPLINE

10 (Falsifying Records)

11 12. Respondent's license is subject to discipline for unprofessional conduct
12 pursuant to Section 2761(a)(1), and Section 2762(e), by falsifying, making grossly incorrect,
13 grossly inconsistent or unintelligible entries in hospital and patient records pertaining to
14 controlled substances, while on duty as a registered nurse at the Kern Medical Center (KMC), as
15 follows:

16 13. On December 12, 2000, at 0113 hours, Respondent obtained 500mg of
17 ketamine from the automated medication dispensing machine and documented that the
18 medication was for Patient #319927. There was no physician order for ketamine for this patient.
19 Respondent did not administer the medication to the patient. Respondent did not document the
20 administration of ketamine in the patient's records. Respondent did not record wastage or
21 otherwise account for the ketamine.

22 14. On January 8, 2001, at 2020 hours, Respondent obtained 10mg of
23 morphine sulfate from the automated medication dispensing machine and documented that the
24 medication was for Patient #1038614. The physician ordered 2mg of morphine sulfate.
25 Respondent documented the administration of 2mg of morphine sulfate at 2045 hours in the
26 patient's records. Respondent did not record wastage or otherwise account for the remaining
27 8mg of morphine sulfate.

28 ///

1 15. On January 9, 2001, at 0259 hours, Respondent obtained 75mg of Demerol
2 from the automated medication dispensing machine and documented that the medication was for
3 Patient #1038614. The physician ordered 75mg of Demerol but canceled the order. Respondent
4 documented administering 75mg of Demerol in the patient's Medication Administration Record
5 (MAR) but crossed out the entry. Respondent did not record wastage or otherwise account for
6 the Demerol.

7 16. Respondent obtained Demerol from the automated medication dispensing
8 machine and documented that the medication was for Patient #851737 on the dates and times
9 listed below. It was not done in response to a physician order. Respondent did not administer
10 the Demerol to this patient.

11 a. On January 9, 2001, at 1947 hours, Respondent obtained a syringe
12 with 75mg of Demerol. Respondent did not document the administration in the patient's
13 records. Respondent did not record wastage or otherwise properly account for the
14 Demerol.

15 b. On January 9, 2001, at 2059 hours Respondent obtained a syringe
16 with 75mg of Demerol. Respondent documented administration of 75mg of Demerol at
17 2115 hours in the patient's MAR, but did not document the administration in the Nurse's
18 Notes.

19 c. On January 9, 2001, at 2346 hours, Respondent obtained a syringe
20 with 50mg of Demerol. Respondent documented administration of 50mg of Demerol on
21 January 10, 2001 at 0001 hours in the patient's MAR, but did not document
22 administration in the Nurse's Notes.

23 d. On January 10, 2001, at 0416 hours, Respondent obtained syringe
24 with 50mg of Demerol. Respondent did not document the administration of Demerol in
25 the patient's records. Respondent did not record wastage or otherwise account for the
26 Demerol.

27 ///

28 ///

1 17. On January 10, 2001, at 0427 hours, Respondent obtained a syringe with
2 2mg of morphine sulfate from the automated medication dispensing machine and documented
3 that the medication was for Patient #1017720. There was no physician order for morphine
4 sulfate for this patient. Respondent did not administer the medication to the patient. Respondent
5 did not document the administration of morphine sulfate in the patient's records. Respondent did
6 not record wastage or otherwise account for the morphine sulfate.

7 18. On January 13, 2001, at 0410 hours, Respondent obtained a syringe with
8 50mg of Demerol from the automated medication dispensing machine and documented that the
9 medication was for Patient #970258. There was no physician order for Demerol. Respondent
10 did not administer the medication to the patient. Respondent did not document the
11 administration of Demerol in the patient's records. Respondent did not record wastage or
12 otherwise account for the Demerol.

13 19. On January 27, 2001, at 0054 hours, Respondent obtained a syringe with
14 75mg of Demerol from the automated medication dispensing machine and documented that the
15 medication was for Patient #1039884. Respondent did not administer the medication to the
16 patient. Respondent did not document the administration of Demerol in the patient's records.
17 Respondent did not record wastage or otherwise account for the Demerol.

18 20. On January 27, 2001, at 0244 hours, Respondent obtained a syringe with
19 10mg of morphine sulfate from the automated medication dispensing machine and documented
20 that the medication was for Patient #1039884. The physician ordered 2mg of morphine sulfate
21 for this patient. Respondent charted the administration of 4mg of morphine sulfate at 0350 hours
22 in the patient's MAR, but failed to document the administration in the Nurse's Notes.
23 Respondent did not record wastage or otherwise account for the remaining morphine sulfate.

24 21. On January 27, 2001, at 0648 hours, Respondent obtained a syringe with
25 4mg of morphine sulfate from the automated medication dispensing machine and documented
26 that the medication was for Patient #1039884. The physician ordered 2mg of morphine sulfate
27 for this patient. Respondent charted the administration of 2mg of morphine sulfate in the
28 patient's MAR, but failed to document the administration in the Nurse's Notes. Respondent did

1 not record wastage or otherwise account for the remaining morphine sulfate.

2 22. On January 28, 2001, at 2337, Respondent obtained a syringe with 4mg of
3 morphine sulfate from the automated medication dispensing machine and documented that the
4 medication was for Patient #998660. At 2338 hours, Respondent obtained a syringe with 2mg
5 of morphine sulfate from the automated medication dispensing machine and documented that the
6 medication was for Patient #998660. There was no physicians order for morphine sulfate for this
7 patient. Respondent did not administer the medication to the patient. Respondent did not
8 document the administration of morphine sulfate in the patient's records. Respondent did not
9 record wastage or otherwise account for the morphine sulfate.

10 23. On January 27, 2001, at 0058 hours, obtained a syringe with 75mg of
11 Demerol from the automated medication dispensing machine and documented that the
12 medication was for Patient #953353. There was no physician order for Demerol for this patient.
13 Respondent did not administer the medication to the patient. Respondent did not document the
14 administration of Demerol in the patient's records. Respondent did not record wastage or
15 otherwise account for the Demerol.

16 24. On January 27, 2001, at 0319 hours, Respondent obtained a syringe with
17 10mg of morphine sulfate from the automated medication dispensing machine and documented
18 that the medication was for Patient #953353. The physician ordered 8mg of morphine sulfate for
19 this patient. Respondent charted the administration of 8mg of morphine sulfate in the patient's
20 MAR, but failed to document the administration in the Nurse's Notes. Respondent did not
21 record wastage or otherwise account for the remaining morphine sulfate.

22 FOURTH CAUSE FOR DISCIPLINE

23 (Use of Controlled Substances)

24 25. Respondent's license is subject to discipline for unprofessional conduct
25 pursuant to Sections 492, 2761(a) and (d) and 2762(b) for using controlled substances in a
26 manner dangerous or injurious to himself, any other person, or the public, or to the extent that
27 such use impaired his ability to conduct the practice of nursing with safety to the public, for the
28 reasons stated in Paragraphs 11 - 24.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:
4

5 1. Revoking or suspending Registered Nurse License No. 443452, issued to
6 Derrick Lloyd Davis.

7 2. Ordering Derrick Lloyd Davis to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: February 8, 2005
12

13
14 Kimberlee King for Ruth Ann Terry, M.P.H., R.N.
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 LA2004600959
22 50016701.wpd
23
24
25
26
27
28

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSEPH N. ZIMRING, State Bar No. 185916
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2559
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2005-35

12 DERRICK LLOYD DAVIS
6001 Auburn Street, #263
13 Bakersfield, CA 93306

ACCUSATION

14 Registered Nurse License No. 443452

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 California Department of Consumer Affairs.

22 2. On or about August 31, 1989, the Board of Registered Nursing issued
23 Registered Nurse License No. 443452 to Derrick Lloyd Davis (Respondent). The license was in
24 full force and effect at all relevant times and will expire on November 30, 2004, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing
27 (Board), California Department of Consumer Affairs, pursuant to the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTORY PROVISIONS

4. Section 2750 provides that the Board may discipline any licensee for any reason provided in the Nursing Practice Act.¹

5. Section 490 provides that the Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2761 provides that the Board may take disciplinary action against a nurse for any of the following:

(a) Unprofessional conduct

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse.

7. Section 2762 provides that it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

....

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

1. Sections 2700, et. seq.

1 8. California Code of Regulations, title 16, section 1444, states:

2 "A conviction or act shall be considered to be substantially related to the
3 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
4 present or potential unfitness of a registered nurse to practice in a manner consistent with the
5 public health, safety, or welfare."

6 9. Section 125.3 provides that the Board may request the administrative law
7 judge to direct a licentiate found to have committed a violation or violations of the licensing act
8 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 10. CONTROLLED SUBSTANCES

10 a. "Demerol" is a brand of meperidine hydrochloride, a derivative of
11 pethidine, and is a Schedule II controlled substance pursuant to Health and Safety Code
12 section 11055(c)(17) and a dangerous drug pursuant to section 4022.

13 b. "Ketalar" is a brand of ketamine, a Schedule III controlled
14 substance pursuant to Health and Safety Code section 11056(g) and a dangerous drug
15 pursuant to Section 4022.

16 c. Morphine (morphine sulfate) is a Schedule II controlled substance
17 pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug
18 pursuant to Section 4022.

19 FIRST CAUSE FOR DISCIPLINE

20 (Conviction of a Substantially Related Crime)

21 11. Respondent's license is subject to discipline pursuant to Section 2761(f),
22 Section 490 and California Code of Regulations, title 16, section 1444, because he was convicted
23 of a crime substantially related to the qualifications, functions and duties of a licensed registered
24 nurse, as follows:

25 a. On or about October 17, 2001, Respondent pled guilty to one count
26 of violating Health and Safety Code section 11364 (possession of a drug paraphernalia), a
27 misdemeanor, in the Superior Court, Bakersfield Judicial District, County of Kern, Case
28 No. BM609232, entitled *The People of the State of California v. Derrick Lloyd Davis*.

1 b. The circumstances surrounding the conviction are that on or about
2 July 27, 2001, medical personnel and Bakersfield police officers were called to
3 Respondent's residence. He was leaning out of his second story window which he had
4 broken and was screaming for help, claiming he was suffocating and couldn't breathe.
5 Respondent was in possession of a large medical syringe containing approximately 10
6 milliliters of Morphine.

7 c. Respondent had stolen the morphine on or about July 26, 2001, while on
8 duty as a registered nurse at the Comprehensive Blood and Cancer Center in Bakersfield,
9 California. Respondent removed 600mg of Morphine Sulfate from a cabinet in the Pain
10 Medicine Department that was prescribed for Patient #14402.

11
12 SECOND CAUSE FOR DISCIPLINE

13 (Falsifying Records)

14 12. Respondent's license is subject to discipline for unprofessional conduct
15 pursuant to Section 2761(a)(1), and Section 2762(e), by falsifying, making grossly incorrect,
16 grossly inconsistent or unintelligible entries in hospital and patient records pertaining to
17 controlled substances, while on duty as a registered nurse at the Kern Medical Center (KMC), as
18 follows:

19 13. On December 12, 2000, at 0113 hours, Respondent obtained 500mg of
20 ketamine from the automated medication dispensing machine and documented that the
21 medication was for Patient #319927. There was no physician order for ketamine for this patient.
22 Respondent did not administer the medication to the patient. Respondent did not document the
23 administration of ketamine in the patient's records. Respondent did not record wastage or
24 otherwise account for the ketamine.

25 14. On January 8, 2001, at 2020 hours, Respondent obtained 10mg of
26 morphine sulfate from the automated medication dispensing machine and documented that the
27 medication was for Patient #1038614. The physician ordered 2mg of morphine sulfate.
28 Respondent documented the administration of 2mg of morphine sulfate at 2045 hours in the

1 patient's records. Respondent did not record wastage or otherwise account for the remaining
2 8mg of morphine sulfate.

3 15. On January 9, 2001, at 0259 hours, Respondent obtained 75mg of Demerol
4 from the automated medication dispensing machine and documented that the medication was for
5 Patient #1038614. The physician ordered 75mg of Demerol but canceled the order. Respondent
6 documented administering 75mg of Demerol in the patient's Medication Administration Record
7 (MAR) but crossed out the entry. Respondent did not record wastage or otherwise account for
8 the Demerol.

9 16. Respondent obtained Demerol from the automated medication dispensing
10 machine and documented that the medication was for Patient #851737 on the dates and times
11 listed below. It was not done in response to a physician order. Respondent did not administer
12 the Demerol to this patient.

13 a. On January 9, 2001, at 1947 hours, Respondent obtained a syringe
14 with 75mg of Demerol. Respondent did not document the administration in the patient's
15 records. Respondent did not record wastage or otherwise properly account for the
16 Demerol.

17 b. On January 9, 2001, at 2059 hours Respondent obtained a syringe
18 with 75mg of Demerol. Respondent documented administration of 75mg of Demerol at
19 2115 hours in the patient's MAR, but did not document the administration in the Nurse's
20 Notes.

21 c. On January 9, 2001, at 2346 hours, Respondent obtained a syringe
22 with 50mg of Demerol. Respondent documented administration of 50mg of Demerol on
23 January 10, 2001 at 0001 hours in the patient's MAR, but did not document
24 administration in the Nurse's Notes.

25 d. On January 10, 2001, at 0416 hours, Respondent obtained syringe
26 with 50mg of Demerol. Respondent did not document the administration of Demerol in
27 the patient's records. Respondent did not record wastage or otherwise account for the
28 Demerol.

1 17. On January 10, 2001, at 0427 hours, Respondent obtained a syringe with
2 2mg of morphine sulfate from the automated medication dispensing machine and documented
3 that the medication was for Patient #1017720. There was no physician order for morphine
4 sulfate for this patient. Respondent did not administer the medication to the patient. Respondent
5 did not document the administration of morphine sulfate in the patient's records. Respondent did
6 not record wastage or otherwise account for the morphine sulfate.

7 18. On January 13, 2001, at 0410 hours, Respondent obtained a syringe with
8 50mg of Demerol from the automated medication dispensing machine and documented that the
9 medication was for Patient #970258. There was no physician order for Demerol. Respondent
10 did not administer the medication to the patient. Respondent did not document the
11 administration of Demerol in the patient's records. Respondent did not record wastage or
12 otherwise account for the Demerol.

13 19. On January 27, 2001, at 0054 hours, Respondent obtained a syringe with
14 75mg of Demerol from the automated medication dispensing machine and documented that the
15 medication was for Patient #1039884. Respondent did not administer the medication to the
16 patient. Respondent did not document the administration of Demerol in the patient's records.
17 Respondent did not record wastage or otherwise account for the Demerol.

18 20. On January 27, 2001, at 0244 hours, Respondent obtained a syringe with
19 10mg of morphine sulfate from the automated medication dispensing machine and documented
20 that the medication was for Patient #1039884. The physician ordered 2mg of morphine sulfate
21 for this patient. Respondent charted the administration of 4mg of morphine sulfate at 0350 hours
22 in the patient's MAR, but failed to document the administration in the Nurse's Notes.
23 Respondent did not record wastage or otherwise account for the remaining morphine sulfate.

24 21. On January 27, 2001, at 0648 hours, Respondent obtained a syringe with
25 4mg of morphine sulfate from the automated medication dispensing machine and documented
26 that the medication was for Patient #1039884. The physician ordered 2mg of morphine sulfate
27 for this patient. Respondent charted the administration of 2mg of morphine sulfate in the
28 \ \ \

1 patient's MAR, but failed to document the administration in the Nurse's Notes. Respondent did
2 not record wastage or otherwise account for the remaining morphine sulfate.

3 22. On January 28, 2001, at 2337, Respondent obtained a syringe with 4mg of
4 morphine sulfate from the automated medication dispensing machine and documented that the
5 medication was for Patient #998660. At 2338 hours, Respondent obtained a syringe with 2mg
6 of morphine sulfate from the automated medication dispensing machine and documented that the
7 medication was for Patient #998660. There was no physicians order for morphine sulfate for this
8 patient. Respondent did not administer the medication to the patient. Respondent did not
9 document the administration of morphine sulfate in the patient's records. Respondent did not
10 record wastage or otherwise account for the morphine sulfate.

11 23. On January 27, 2001, at 0058 hours, obtained a syringe with 75mg of
12 Demerol from the automated medication dispensing machine and documented that the
13 medication was for Patient #953353. There was no physician order for Demerol for this patient.
14 Respondent did not administer the medication to the patient. Respondent did not document the
15 administration of Demerol in the patient's records. Respondent did not record wastage or
16 otherwise account for the Demerol.

17 24. On January 27, 2001, at 0319 hours, Respondent obtained a syringe with
18 10mg of morphine sulfate from the automated medication dispensing machine and documented
19 that the medication was for Patient #953353. The physician ordered 8mg of morphine sulfate for
20 this patient. Respondent charted the administration of 8mg of morphine sulfate in the patient's
21 MAR, but failed to document the administration in the Nurse's Notes. Respondent did not
22 record wastage or otherwise account for the remaining morphine sulfate.

23 24 THIRD CAUSE FOR DISCIPLINE

25 (Obtain or Possess Controlled Substances)

26 25. Respondent's license is subject to discipline for unprofessional conduct
27 pursuant to Sections 2761(a) and 2762(a) for unlawfully obtaining, possessing, prescribing, or
28 administering to himself, controlled substances as stated in Paragraphs 11 - 24.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Use of Controlled Substances)

3 26. Respondent's license is subject to discipline for unprofessional conduct
4 pursuant to Sections 2761(a) and 2762(b) for using controlled substances in a manner dangerous
5 or injurious to himself, any other person, or the public, or to the extent that such use impaired his
6 ability to conduct the practice of nursing with safety to the public, for the reasons stated in
7 Paragraphs 11 - 25.

8 **PRAYER**


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

11
12 1. Revoking or suspending Registered Nurse License No. 443452, issued to
13 Derrick Lloyd Davis.

14 2. Ordering Derrick Lloyd Davis to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 9/2/04

19
20
21 
22 RUTH ANN TERRY, M.P.H., R.N.
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant

27 LA2004600959

60041230.wpd

28 CML (05/27/2004)